

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 202 – HB 196

February 28, 2013

SUMMARY OF ORIGINAL BILL: Redefines “criminal gang offense” under Tenn. Code Ann. § 40-35-121(a)(3). Broadens the definition of “pattern of criminal gang activity” to include convictions for facilitation of criminal gang offenses. Adds a new subsection to Tenn. Code Ann. § 40-35-121 allowing “criminal gang offenses” to be considered for the purpose of establishing a “pattern of criminal gang activity.”

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$25,500/Incarceration*

Funding for this bill in the amount of \$28,700 is included in the Governor’s proposed FY13-14 budget.

SUMMARY OF AMENDMENT (003400): Adds rape of a child to the list of offenses specifically listed in the definition of “criminal gang offense.”

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the corrected fiscal note.

Assumptions for the bill as amended:

- The current definition of “criminal gang offense” includes any offense involving a defendant knowingly causing, or threatening to cause, death or bodily injury and specifically included rape, aggravated rape, and rape of a child; and offenses that resulted, or were intended to result, in a benefit, income, property, money, or anything of value from the sale of drugs or from the commission of aggravated burglary. The breadth of “criminal gang offense” encompassed several existing offenses (e.g., aggravated assault, voluntary manslaughter, aggravated kidnapping, etc.). The bill will redefine “criminal gang offense” by specifically listing the offenses that constitute a “criminal gang offense.”
- The bill includes some offenses—unlawful carrying/possession of a weapon and robbery—that are not fully encompassed within the current definition of “criminal gang offense.” These offenses will result in increased incarceration costs.

- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2013 is \$64.17.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.
- Based on statistics from the DOC, there has been an average of 93 felony admissions for unlawful carrying/possession of a weapon at a Class E felony level for the past 10 years. It is assumed one percent of the previous 10-year admissions (1 offender) would be sentenced one classification higher under this proposed legislation. An enhancement from a Class E felony to a Class D felony results in an additional 0.59 years of incarceration (1.8 years, the average time served for a Class D felony – 1.21 years, the average time served for a Class E felony).
- A recidivism discount of 33.75 percent applies, but due to the low number of admissions added by this legislation, the recidivism discount does not impact the incarceration cost.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 0.59 years (215.5 days) for a total of \$13,829 (\$64.17 x 215.5 days).
- Robbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear.
- “Violence” is not defined in the Tennessee Code Annotated, but the Tennessee Supreme Court has defined “violence” as the unlawful exercise or exertion of physical force so as to injure, damage, or abuse. *State v. Fitz*, 19 S.W.3d 213, 216 (Tenn. 2000). For example, shoving someone in an aggressive manner that causes the subject to fall backward into a retail display constitutes violence sufficient to convict a defendant of robbery. *Id.* at 217. Pointing a deadly weapon at someone also constitutes violence. *State v. Allen*, 69 S.W.3d 181, 186 (Tenn. 2002).
- Tenn. Code Ann. § 39-11-106(a)(2) defines “bodily injury” as a “cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty.”
- Though not an element of the offense, it is reasonable to assume that the vast majority of robberies involve bodily injury or the threat of bodily injury. These robberies would be enhanced under the current definition of “criminal gang offense” if committed by a criminal gang member. Those robberies that do not result in bodily injury or involve the threat of bodily injury, however, would not be enhanced under the current definition of “criminal gang offense” and will lead to additional incarceration costs.
- According to the DOC, there has been an average of 459.9 admissions for robbery, a Class C felony, for the past 10 years. It is assumed that only 5 percent (23 offenders) of robberies do not involve bodily injury or the threat of bodily injury. It is assumed that one percent of those 23 offenders, or 1 offender every five years, would be sentenced one classification higher under this proposed bill.
- An enhancement from a Class C felony to a Class B felony results in an additional 2.48 years of incarceration (5.79 years, the average sentence for a Class B felony – 3.31 years, the average sentence for a Class C felony).
- A recidivism discount of 43.36 percent applies, but due to the low number of


admissions added by this legislation, the recidivism discount does not impact the incarceration cost.

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every five years serving an additional 2.48 years. The cost per offender at 2.48 years (905.82 days) is \$11,625 [(\$64.17 x 905.82 days) / 5].
- The total additional incarceration cost is \$25,454 (\$13,829 + \$11,625).
- Any increase in caseloads for the District Public Defenders Conference or the District Attorneys General Conference can be accommodated within existing resources without an increased appropriation or reduced reversion.
- Any impact to the caseloads of state trial courts can be accommodated within existing judicial resources without an increased appropriation or reduced reversion.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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